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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

LERON AMOS FRANKLIN,

Defendant and Appellant.

B290909

(Los Angeles County
Super. Ct. No. TA143687)

APPEAL from an order of the Superior Court of Los Angeles County, Lynn D. Olson, Judge. Appeal dismissed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Leron Amos Franklin appeals from an order denying his motion to withdraw his no contest plea to assault with a semiautomatic firearm. Franklin contends he should have been permitted to withdraw his negotiated plea because at the time he was suffering from posttraumatic stress disorder (PTSD) and did not fully understand and appreciate his choices and decisions. Because Franklin's claim is procedurally barred, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Felony Complaint

Franklin was charged in a felony complaint with one count of assault with a semiautomatic firearm on Antonio Bens (Pen. Code, § 245, subd. (b); count 1), with a special allegation he personally used a firearm to commit the offense (§ 12022.5), and one count of assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(4); count 2). As to both counts, the complaint specially alleged Franklin had personally inflicted great bodily injury on Bens (§ 12022.7, subd. (a)).

B. The Incident

According to the probation officer's report, when Bens went to his former wife's residence to drop off his children, Franklin approached him, holding a gun. After they exchanged words, Franklin "pistol-whipped" Bens with the gun, striking him on the left side of his face. Bens fell to the ground. Franklin continued to hit the back of Bens's head with the butt of the gun, then fled in his car. Bens was later treated for a broken jaw.

C. *The Plea and Sentencing Hearing*

On November 20, 2017, pursuant to a negotiated agreement, Franklin pleaded no contest to one count of assault with a semiautomatic firearm. The People offered as part of the agreement that Franklin would be sentenced to the lower term of three years and the remaining count and allegations would be dismissed. Before Franklin entered his plea, he was advised of his constitutional rights, including the right to a preliminary hearing, and the nature and consequences of the plea, which he stated he understood. The prosecutor repeatedly confirmed with Franklin that he understood the terms of the plea agreement. Defense counsel joined in the waivers of Franklin's constitutional rights and stipulated to a factual basis. The court expressly found Franklin's waivers and plea were voluntary, knowing and intelligent.

The sentencing hearing was continued because Franklin had been hospitalized following an accident. On March 2, 2018 the trial court sentenced Franklin in accordance with the plea agreement to a three-year state prison term. The court awarded Franklin four days presentence custody credits (two actual days plus two days conduct credit), set a restitution hearing date, and ordered Franklin to pay statutory fines, fees and assessments. The court dismissed the remaining count and special allegations.

D. *Franklin's Motion To Withdraw His Plea*

On June 7, 2018 Franklin, represented by counsel, moved to withdraw his plea, arguing there was good cause because at the time of the plea he was suffering from PTSD. Franklin filed a declaration in support of his motion, explaining, "While it may have appeared—outwardly to the average person—that I was in a normal state of mind, inside I was not thinking clearly."

Franklin attached to the motion documents from the Department of Veterans Affairs indicating Franklin was receiving service-connected disability compensation and had been referred for treatment for his “mental health . . . and substance abuse issues.” Franklin also provided a character reference from a social worker.

At the June 22, 2018 hearing, the trial court denied Franklin’s motion to withdraw his plea. The court found there was nothing in Franklin’s moving papers “to indicate that you did not freely, knowingly, voluntarily, and with full knowledge of the consequences enter your plea and take the People’s offer, which was, based on the charges, a very generous offer.” The court concluded Franklin had not shown by clear and convincing evidence good cause to withdraw his plea.

Franklin filed a timely notice of appeal. However, he did not obtain a certificate of probable cause.

DISCUSSION

We appointed counsel to represent Franklin on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On November 16, 2018 we advised Franklin he had 30 days in which to submit any contentions or issues he wished us to consider. We have received no response.

A defendant may move to set aside a guilty or no contest plea for good cause at any time before entry of judgment. (Pen. Code, § 1018.) “Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea’ under section 1018” (*People v. Patterson* (2017) 2 Cal.5th 885, 894; accord, *People v. Johnson* (2009) 47 Cal.4th 668, 679.) A defendant must support his or her

claim with clear and convincing evidence. (*Patterson*, at p. 894.) We review a trial court’s decision whether to allow a defendant to withdraw a plea for an abuse of discretion. (*Ibid.*; *People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 796.)

Because Franklin’s appeal from the denial of his motion to withdraw his no contest plea goes to the validity of the plea itself, the order is only appealable if Franklin first obtains a certificate of probable cause under Penal Code section 1237.5. (*People v. Johnson, supra*, 47 Cal.4th at p. 679) [“A defendant must obtain a certificate of probable cause in order to appeal from the denial of a [section 1018] motion to withdraw a guilty plea, even though such a motion involves a proceeding that occurs *after* the guilty plea.”]; see Pen. Code, § 1237, subd. (a) [providing for appeal only from final judgment of conviction, except as provided in § 1237.5].) Because Franklin pleaded no contest and failed to obtain a certificate of probable cause, we dismiss his appeal. (*Johnson*, at p. 676; see *People v. Panizzon* (1996) 13 Cal.4th 68, 89-90 [directing Court of Appeal to dismiss appeal from challenge to sentence entered after negotiated plea].)

DISPOSITION

The appeal is dismissed.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.